

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

George Bell, K.C., for the appellants.

Glyn Osler, for the plaintiffs.

THE COURT allowed the appeal, and referred the case back to the Master in Ordinary, with a direction to postpone the sale, but not to a day later than the 16th July, 1913, and to fix a reserved bid. The appellants to have the costs of this appeal and of the motion before BRITTON, J.

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MARCH 8TH, 1913.

WALLER v. TOWN OF SARNIA.

*Negligence—Municipal Corporation—Repair of Pavement—Statutory Duty—Delegation to Contractor—Use of Dangerous Material—Necessity for Precautions—Injury to Child—Necessary Work—Notice of Action—Contributory Negligence.*

Appeal by the defendants from the judgment of LEITCH, J., ante 403.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and SUTHERLAND, JJ.

T. G. Meredith, K.C., and J. Cowan, K.C., for the defendants.

D. L. McCarthy, K.C., for the plaintiffs.

The judgment of the Court was delivered by SUTHERLAND, J.:—The creosote wood block pavement on Front street, in the town of Sarnia, had become out of repair, and the municipal corporation, the defendants herein, called upon those who had laid the pavement and had guaranteed to keep it intact, or in good condition, for a stated period not yet expired, to make it right. The United States Wood Preserving Company thereupon undertook the work, supplying plant and materials and employing the workmen.

While the work was being done, the cauldron in which the asphalt pitch used in connection therewith was melted, was placed on Lochiel street adjacent to the point on Front street